

1 DAVID B. GOLUBCHIK (State Bar No. 185520)
2 TODD M. ARNOLD (State Bar No. 221868)
3 LEVENE, NEALE, BENDER, YOO & GOLUBCHIK L.L.P.
4 2818 La Cienega Avenue
5 Los Angeles, California 90034
6 Telephone: (310) 229-1234
7 Facsimile: (310) 229-1244
8 Email: dbg@lnbyg.com; tma@lnbyg.com

9 Attorneys for Debtor and Debtor in Possession

10
11 **UNITED STATES BANKRUPTCY COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13 **LOS ANGELES DIVISION**

14 In re:
15
16 CRESTLLOYD, LLC,
17
18 Debtor and Debtor in Possession.

Case No.: 2:21-bk-18205-DS

Chapter 11 Case

**DEBTOR'S RESPONSE TO "MOTION TO
ENFORCE THE COURT'S ORDER
APPROVING BID PROCEDURES"**

Hearing:

Date: March 11, 2022

Time: 1:00 p.m.

Place: Courtroom 1639
255 E. Temple St.

Los Angeles, CA 90012

VIA ZOOMGOV ONLY

1 Crestlloyd, LLC, the Chapter 11 debtor and debtor in possession herein (the “Debtor”), hereby
2 files its Response to the “Motion To Enforce The Court’s Order Approving Bid Procedures”
3 (“Motion”) filed by Richard Saghian (“Saghian”).

4 As the Court is aware, the Debtor’s primary asset is the residential real property that it
5 developed, which is located at 944 Airole Way, Los Angeles, CA 90077 (the “Property”). This
6 bankruptcy was commenced to stay a pre-petition foreclosure sale of the Property and preserve value
7 for the benefit of all creditors. Based on information and advice provided to the Debtor by
8 experienced real estate professionals, the Debtor believed that the fair market value of the Property
9 was approximately \$325 million, while the pre-petition secured debts were less than \$180 million.

10 With the support and consent of the creditors, the Debtor proposed a marketing plan with an
11 online auction through Concierge Auctions, which was approved by the Court through a Bid
12 Procedures Order. Pursuant to the Bid Procedures Order, the auction would take place from February
13 28, 2022 through March 3, 2022, with no minimum reserve. However, the Bid Procedures Order did
14 not provide for the approval of the sale to the highest bidder. Rather, upon conclusion of the auction,
15 the Debtor was to file a motion with the Court to seek approval of the highest bid, without prejudice to
16 any creditors objecting to such sale. The Court would then determine if the sale is in the best interest
17 of the estate and all creditors and whether the sale should be approved pursuant to Section 363(b) of
18 the Bankruptcy Code, as well as free and clear of all liens, claims and encumbrances under Section
19 363(f) of the Bankruptcy Code.

20 Consistent with the approved procedures, after extensive marketing efforts, an online auction
21 took place. At the conclusion of the auction, Saghian submitted the highest bid for \$126 million.
22 Once the credit of 9.5% of the purchase price (a credit agreed to by Concierge from a gross 12% buyer
23 premium which it receives) is factored, the effective sale price to the estate is approximately \$137.97
24 million.

25 At the conclusion of the sale, the Debtor and its brokers were contacted by numerous parties
26 and advised that there were other interests in bidding for the Property. At least one person stated that
27 he had a technical difficulty registering online. Another stated that they had not had an opportunity to
28 complete due diligence. Yet another stated that the current was in Ukraine interfered with access to

1 funds. Notwithstanding the foregoing, the Debtor was obligated to proceed with a sale motion
2 pursuant to the Bid Procedures Order.

3 Consistent with its obligations, the Debtor prepared and filed its motion to approve sale of the
4 Property to Saghian as the highest bidder the auction. The sale motion further advised the Court and
5 all parties that, although other expressions of interest were received, the Debtor was required to
6 proceed with the current sale and did not expect or assume that the sale hearing on March 18, 2022
7 would be a second auction. Nevertheless, the Debtor advised the Court and all parties that, to the
8 extent that the Debtor receives credible offers, it would not accept such offers, but would simply
9 submit them to the Court so that the Court can consider the totality of the circumstances and any other
10 bids, if any, to determine whether a sale, and at what price, should be approved as a sale in the best
11 interest of the estate and all creditors. Moreover, and importantly, because the current high bid from
12 Saghian is less than the asserted secured debt (which secured debt is subject to a bona fide dispute),
13 the Court must consider whether Section 363(f) is satisfied.

14 Oddly, while seeking to compel enforcement of the Bid Procedures Order, Saghian has not met
15 his obligations thereunder. The Bid Procedures Order provided that the winning bidder was required
16 to execute the Sale Agreement and Addendum approved by the Court. Saghian did not do so, because
17 he made the following material revision to the Addendum:

18 d. If for any reason, or no reason whatsoever (other than if the Seller sells the Property to another
19 party other than the Buyer or otherwise breaches the Agreement), the Seller is unable to deliver
20 good and marketable title to the Property to the Buyer, the Buyer's sole remedy shall be the return
21 of any money that it has deposited toward the purchase of the Property.

22 This provision was included in the Addendum to address the issue raised here:– If the Debtor receives
23 a higher and better offer after the auction and the Court approves such offer, then Saghian would only
24 be entitled to recover his deposit and not to seek specific performance. Through his material revision
25 to the Addendum, Saghian is trying to eliminate such potential result and to have the Debtor
26 essentially committed to a sale to Saghian even if there is a materially higher offer that is better for the
27 estate, which would cause the Debtor to breach its fiduciary duty to creditors. Saghian is attempting
28 to reach the same result through the instant Motion.

1 The Motion filed by Saghian effectively seeks an injunction prohibiting the Debtor from
2 submitting any other bids, to the extent received, to the Court, or for interested third parties to provide
3 offers to the Debtor. The Debtor has concerns with such an approach:

- 4 1. It appears that a request for an injunction is one that should be pursued through an adversary
5 proceeding pursuant to Rule 7001 of the Federal Rules of Bankruptcy Procedure. Saghian
6 has not commenced an adversary proceeding in this case.
- 7 2. Pursuant to the Bid Procedures Order, the Court has not pre-approved the high bid at the
8 auction to be the approved buyer for the Property, since the Bid Procedures Order require a
9 motion and order of the Court, subject to all interested parties' right to object and be heard.
- 10 3. The purpose of this bankruptcy case is to effectuate transactions which are in the best
11 interest of the estate and all creditors.

12 For example, assume that a third party surfaces and offers to pay \$300 million all cash for the
13 Property. Such a sale would result in 100% payment to all creditors and a solvent estate. It is
14 possible, but not a certainty, that when compared to the current bid, and taking into consideration the
15 interests of creditors, this Court may find that a 100% payment to all creditors has a greater level of
16 importance than consummating a sale to Saghian as the high bidder at the auction. On the other hand,
17 the Court may determine that the Property was adequately marketed and all interested parties had an
18 opportunity to register and bid at the auction and, therefore, the process of the auction should be
19 protected and any later-submitted bids should be ignored. Either way, the consideration of the issues
20 should properly be addressed at the sale hearing on March 18, 2022, in connection with considering
21 the Sale Motion in its entirety. It is simply premature to issue an injunction at this stage of the process
22 without considering what else may be available to benefit the creditors of this estate.

23 There is no prejudice to Saghian to assert the same objection at the March 18, 2022 hearing. On
24 the other hand, an injunction issued at this time to prevent any other bids would prejudice other
25 creditors of this estate. The balance of equities clearly waive in favor of the creditors of this estate.

26
27 ///

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 2818 La Cienega Avenue, Los Angeles, CA 90034

A true and correct copy of the foregoing document entitled **DEBTOR'S RESPONSE TO "MOTION TO ENFORCE THE COURT'S ORDER APPROVING BID PROCEDURES"** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **March 11, 2022**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Kyra E Andrassy kandrassy@swelawfirm.com, lgarrett@swelawfirm.com;gcruz@swelawfirm.com;jchung@swelawfirm.com
- Todd M Arnold tma@lnbyg.com
- Jerrold L Bregman jlbregman@bg.law, ecf@bg.law
- Marguerite Lee DeVoll mdevoll@watttieder.com, zabrams@watttieder.com
- Danielle R Gabai dgabai@danninggill.com, dgabai@ecf.courtdrive.com
- Thomas M Geher tmg@jmbm.com, bt@jmbm.com;fc3@jmbm.com;tmg@ecf.inforuptcy.com
- David B Golubchik dbg@lnbyg.com, stephanie@lnbyb.com
- James Andrew Hinds jhinds@hindslawgroup.com;mduran@hindslawgroup.com, mduran@hindslawgroup.com
- Robert B Kaplan rbk@jmbm.com
- Jane G Kearl jkearl@watttieder.com
- Jennifer Larkin Kneeland jkneeland@watttieder.com, zabrams@watttieder.com
- Michael S Kogan mkogan@koganlawfirm.com
- Noreen A Madoyan Noreen.Madoyan@usdoj.gov
- Ryan D O'Dea rodea@shulmanbastian.com, lgauthier@shulmanbastian.com
- Sharon Oh-Kubisch sokubisch@swelawfirm.com, gcruz@swelawfirm.com;1garrett@swelawfirm.com;jchung@swelawfirm.com
- Ronald N Richards ron@ronaldrichards.com, 7206828420@filings.docketbird.com
- Victor A Sahn vsahn@sulmeyerlaw.com, pdillamar@sulmeyerlaw.com;pdillamar@ecf.inforuptcy.com;vsahn@ecf.inforuptcy.com;cblair@sulmeyerlaw.com;cblair@ecf.inforuptcy.com
- William Schumacher wschumac@milbank.com, autodocketecf@milbank.com
- David Seror dseror@bg.law, ecf@bg.law
- Zev Shechtman zshechtman@DanningGill.com, danninggill@gmail.com;zshechtman@ecf.inforuptcy.com
- Mark Shinderman mshinderman@milbank.com, dmuhrez@milbank.com;dlatie@milbank.com
- Lindsey L Smith lls@lnbyb.com, lls@ecf.inforuptcy.com
- United States Trustee (LA) ustpreion16.la.ecf@usdoj.gov
- Jessica Wellington jwellington@bg.law, ecf@bg.law

1 **2. SERVED BY UNITED STATES MAIL:** On **March 11, 2022**, I served the following persons and/or
2 entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true
3 and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and
4 addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be
5 completed no later than 24 hours after the document is filed.

6 ☐ Service information continued on attached page

7 **3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR**
8 **EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR,
9 on **March 11, 2022**, I served the following persons and/or entities by personal delivery, overnight mail
10 service, or (for those who consented in writing to such service method), by facsimile transmission and/or
11 email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight
12 mail to, the judge will be completed no later than 24 hours after the document is filed.

13 ☐ Service information continued on attached page

14 I declare under penalty of perjury under the laws of the United States of America that the foregoing is
15 true and correct.

16
17
18
19
20
21
22
23
24
25
26
27
28
March 11, 2022
Date

Lourdes Cruz
Type Name

/s/ Lourdes Cruz
Signature